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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/516,486	05/18/2005	John McGuire	MCGJ101NUS	2842

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EXAMINER

DUCKWORTH, BRADLEY

ART UNIT	PAPER NUMBER
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3632

MAIL DATE	DELIVERY MODE
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05/21/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/516,486	Applicant(s) MCGUIRE, JOHN	
	Examiner Bradley H. Duckworth	Art Unit 3632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 April 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-17 and 20-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-17 and 20-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 November 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,2,3,4,5,6,7,10,11, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Vancaillie et. Al.(US005956130). Referring to figure 1, Vancaillie teaches a stand, comprising indicator means(67), catheter bags(80) a first component(70) with attachment means for a medical bag(50) and is adapted to move in a substantially vertical direction relative to a second component(74) where the movement of the first component activates the indicator means, the two components comprising hollow tubular sections, where the first component is positioned above and substantially within the top of the second section, where the lower region of the first section has a diameter smaller than that of the diameter of the uppermost section of the second component. The stand further comprising a compression spring(91) located in the second component where the first component makes contact with and sits on the compression spring. The indicator means mentioned above, in the embodiment of figure 1, comprise a means to measure the weight induced compression of the spring(91) whereby the means sends a signal to a computing means which activates either one or more of an indicator light or audible alarm, as detailed in the first paragraph of column 21 among other places, when the spring either compresses(weight added, i.e. medical bag filling) or extends(weight lost, i.e. medical bag emptying) past a predetermined point.

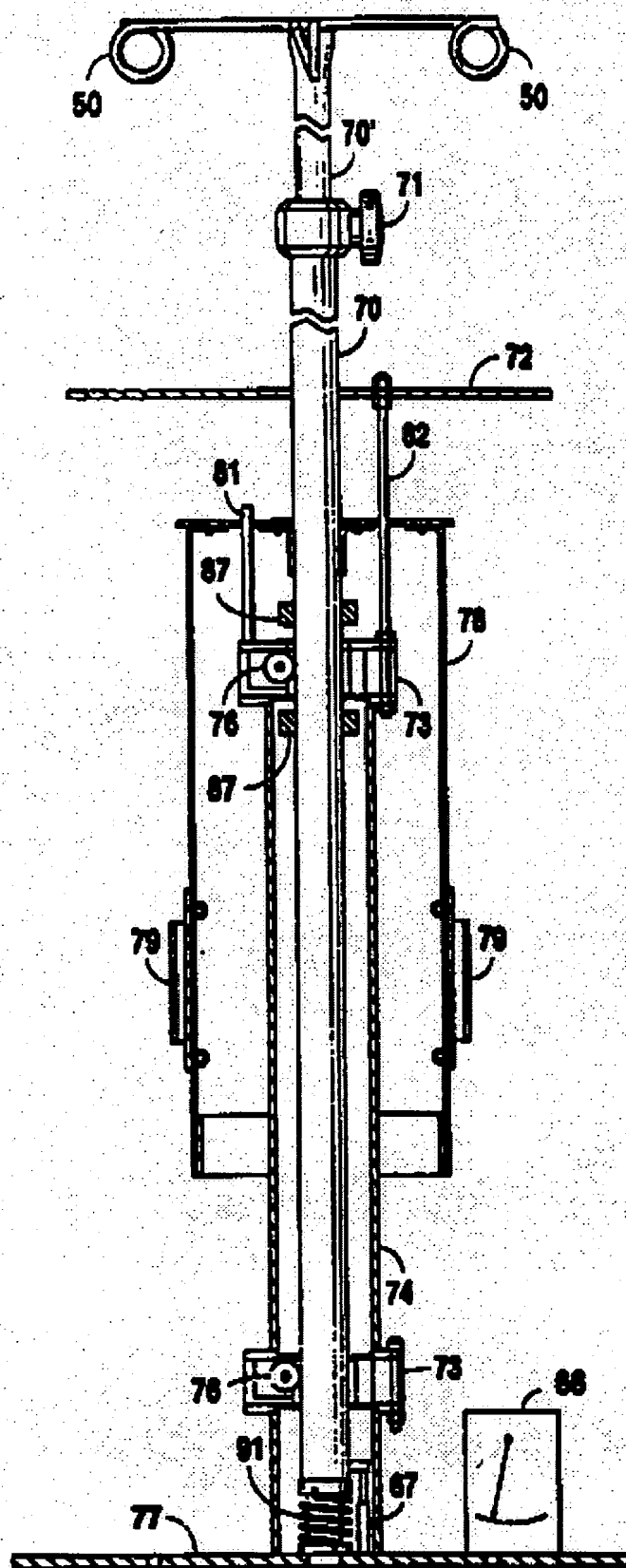


Fig. 1

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Claims 1,8 and 9 rejected under 35 U.S.C. 102(b) as being anticipated by Vancaillie. Vancaillie teaches another embodiment of a stand, as shown in figure 4, comprising an indicator means(here 64,51, and 67) where movement of a first component, taken as rod(70) up to load cell(64) including casing(78) and means to hold a medical bag(50), relative to a second component(74), whereby the lowermost region of the first component(78) is substantially over the uppermost region of the second component, where the diameter of the lowermost region of the first component is larger than the diameter of the uppermost region of the second component.

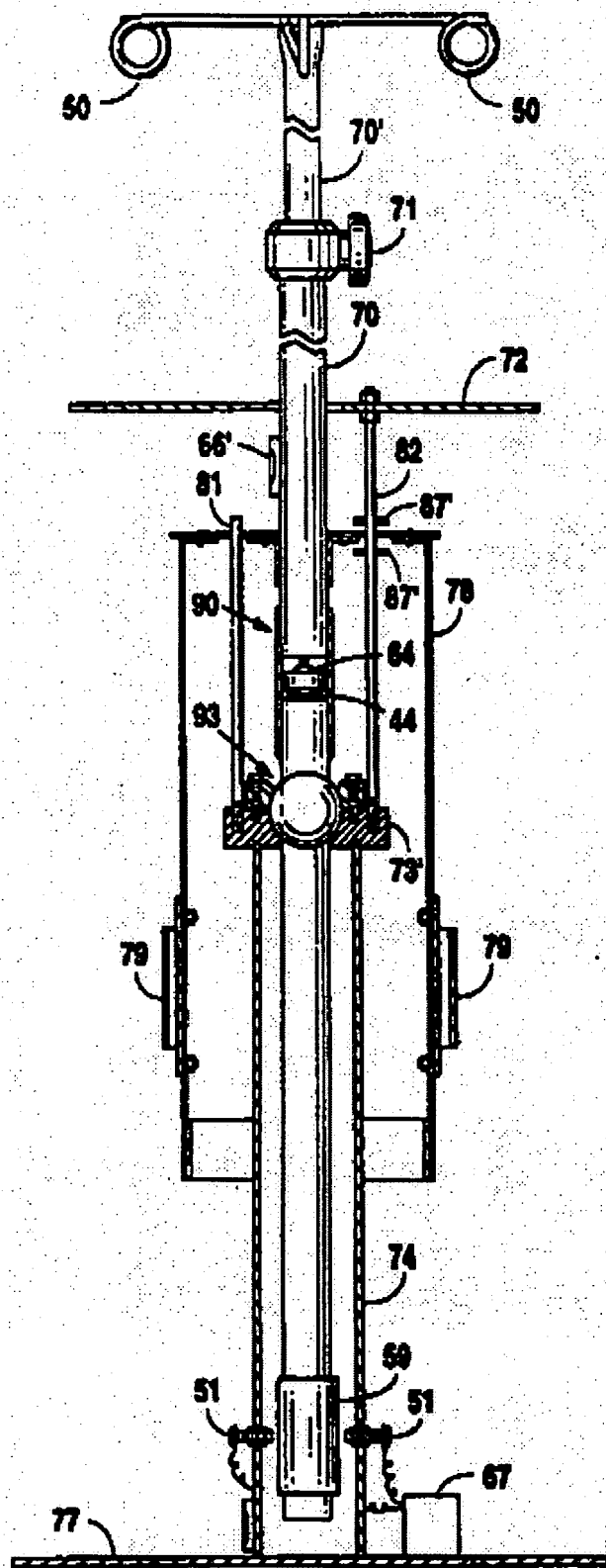


Fig. 4

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

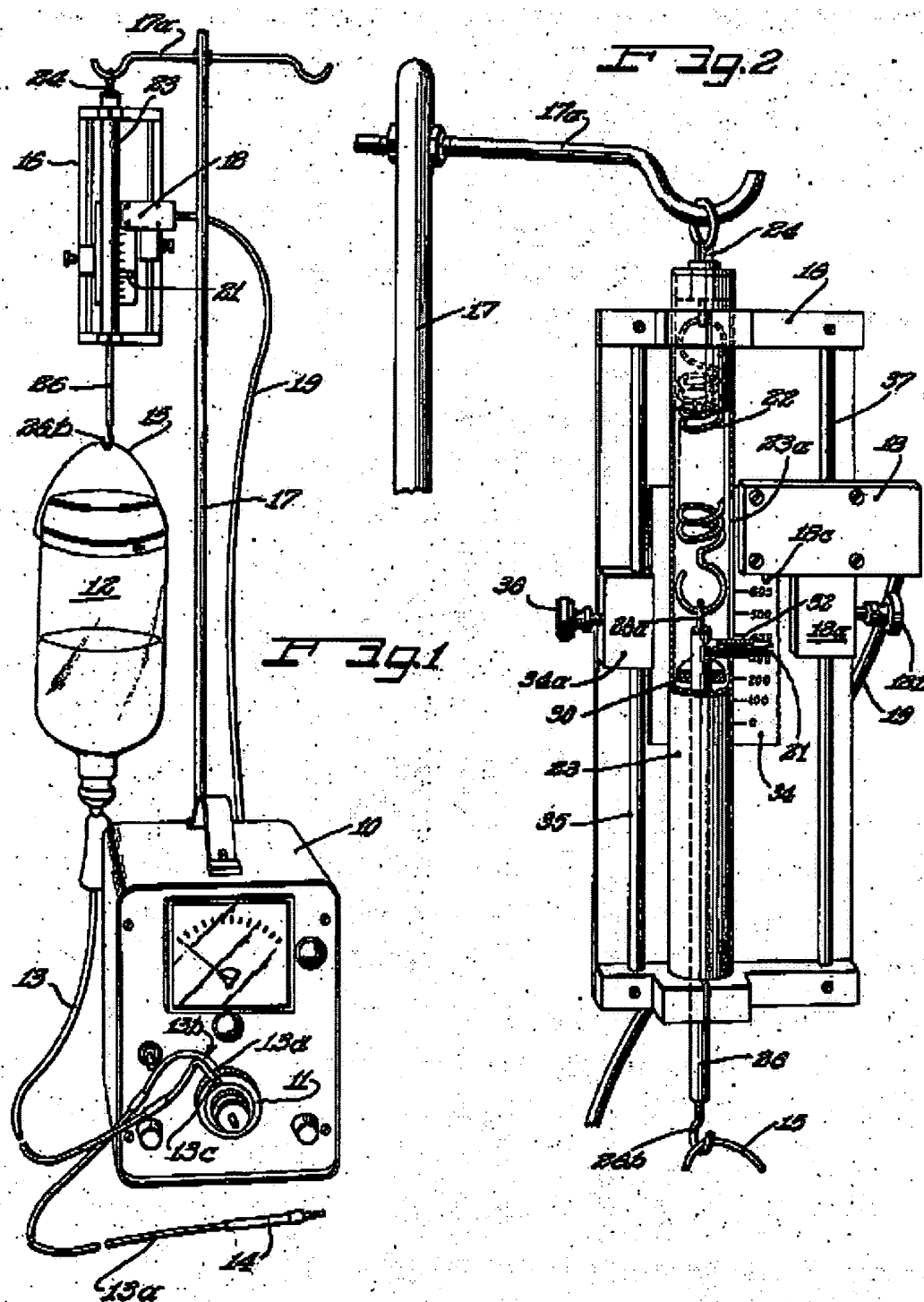
The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gordon et al.(US003425415). Claims 1,4, and 20-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gordon et al.(US003425415). Gordon teaches a controlled infusion system, referring to figures 1 and 2, comprising an indicator means(34), a first component with attachment means (26B) attached to a medical bag, that can move relative to a second component(17) in a substantially vertical direction, whereby movement of the first component activates the indicator means, further comprising a third tubular (23) where the indicator means are on the third component, where filling of the bag while on the device would move the bag from a first position, to a second position, activating visual indicator means(pointer on scale), the indicator means being

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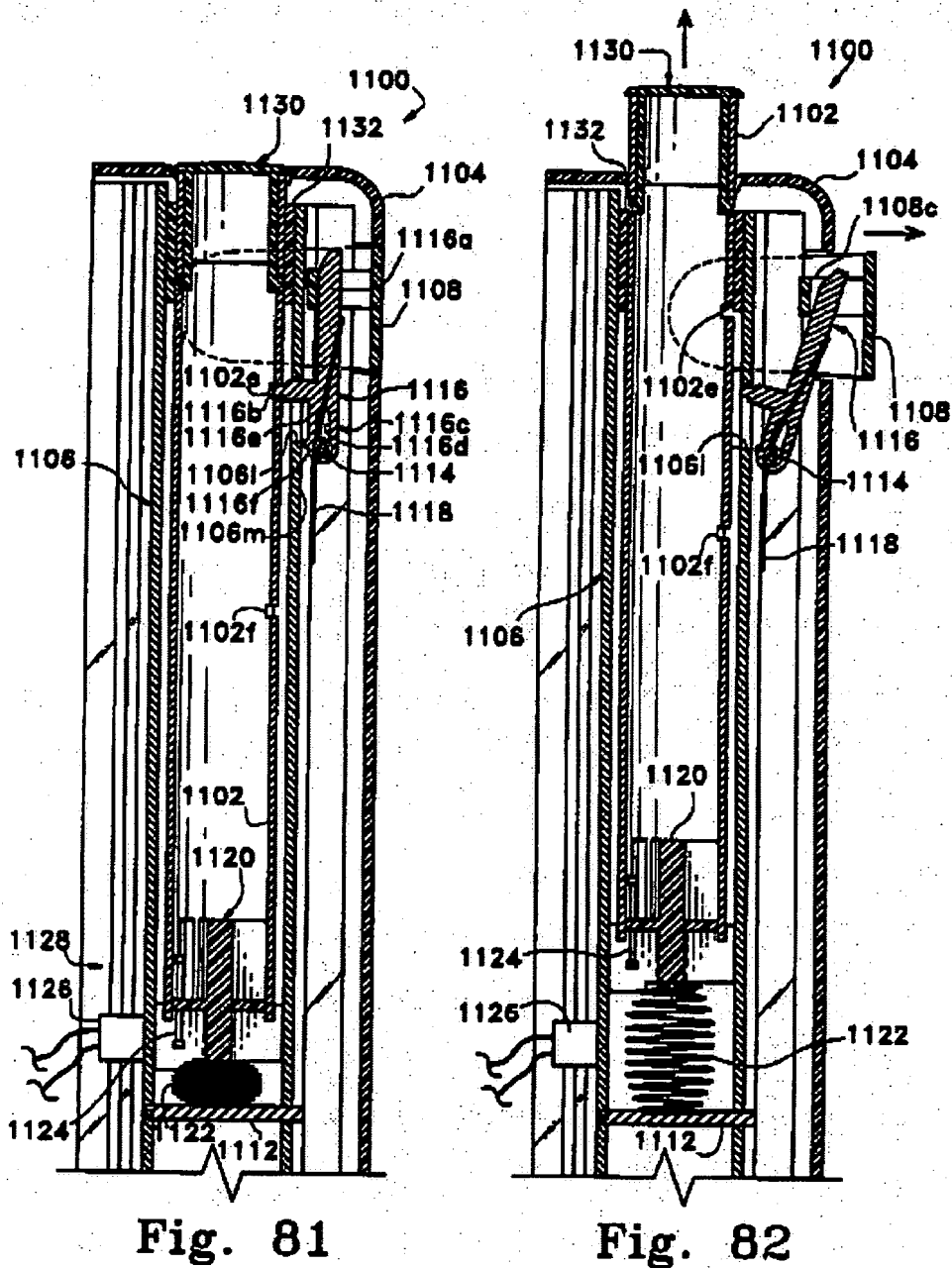
active even if the bag is not full, and where further movement would activate mechanical switch (18) by pin (21). Gordon discloses the use of an infusion bag for controlled drainage, however the use of catheter bags is well known in the art and it would have been obvious to use the support device with a catheter bag to monitor the filling of the bag, as this would require nothing more than placing a catheter bag on the support, and would allow for the accurate measurement of fluids out of a patient (as opposed to into a patient as taught by Gordon). It further would have been obvious to move the switch (18) below pin (21) such that it would activate when a catheter bag placed on the support filled to a certain level.



Claims 12,13,14,16,17,18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vancaillie as applied to claims 1 and 15 above, further in view of Ferrand et al.(US005906016) further in view of www.alliedelec.com, specific pages listed in the PTO-892 sent with the previous office action, labeled reference pages U,V,W. As detailed above Vancaillie teaches a stand with means to measure the relative motion of the first component to the second component, when either weight is added or subtracted to the first component, as well as teaching a means to select a predetermined point for maximum spring compression or expansion, where motion past this point would activate an alarm or indicator lights. The means of Vancaillie comprises a computing means, load cells, and a linear variable differential transformer to measure the compression of spring(91). However Vancaillie does not teach the use of a magnetic array and a reed switch as a part of the indicator means. Ferrand teaches a patient care system comprising a telescoping rod assembly as shown in figures 81 and 82. The rod assembly is equipped with a magnetic array (1124) and a reed switch(1126) with the magnetic array on a first component(1102) and the reed switch on a second component(1106), and a spring (1122) on the second component with the first component resting thereon, where the magnetic array in proximity of the reed switch activates an alarm as detailed in paragraphs 141, 251 and 252 of the disclosure. Further it is known that reed switches and magnets such as the ones shown described are substantially less costly then load cells and linear variable differential transducers, with reed switches and magnets costing a few dollars (reference page U), as shown here, and load cells and linear transducers costing several hundred dollars, as shown

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here from the same vendor (pages V,W). Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to replace the linear transducers and load cells of Vancaillie with reed switches and magnetic arrays as shown by Ferrand, in order to create a indicator system that would have the same basic functionality, in that indicator lights or an alarm could be activated by computing means when the magnetic array neared the reed switch as weight was either applied or taken off of the first component, such as when a medical bag filled or empties respectively, because not only would this system provide the same basic functionality disclosed by Vancaillie it would be significantly less costly.



Response to Arguments

Applicant's arguments filed 4/4/07 have been fully considered but they are not persuasive. With respect to the arguments regarding the rejection based on Gordon, the

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arguments are moot in view of the new grounds of rejection. With respect to the arguments against the rejections based on Vancaillie, first Vancaillie clearly shows a catheter bag or "fluid collector" (80). Secondly the complexity of Vancaillie is no bar to its applicability as prior art under 102, also anticipation has nothing to do with where a skilled reader would look, which appears to be an argument for non-analogous art, which is not a factor in 102 rejections. With regards to the arguments directed to the 103 rejection of claims 12-14 and 16-19, first there is motivation clearly stated in the above 103 rejection, so motivation is present, secondly there is a reasonable expectation of success since Ferrand teaches that magnetic arrays would work with determining the displacement of a tubular element. Also it is unclear what claim limitations are not taught or suggested as asserted by the applicant. The motivation to modify or combine references need not be explicitly shown in the references themselves but can come from the knowledge held by one of ordinary skill in the art at the time of invention, and the desire to make things the cost less (motivation used) would have been known to one of ordinary skill in the art at the time of invention. Also Ferrand is not only concerned with patient beds, but entire patient care systems including a medical bag support, which is integral to the device of Ferrand.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bradley H. Duckworth whose telephone number is 571-272-2304. The examiner can normally be reached on m-f 8:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on 571-272-6842. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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5/11/07



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